IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.576 OF 2005

Shruti Vinod Agarwal ... Petitioner

versus

ICICI Bank Ltd. & anr. ... Respondents

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Ms. M.V. Thakkar, for Ms.Sheetal Shenoy for the Petitioner.

Mr. Naushad Engineer, Ms. Gaglani and Mr. Vinod Kothari i/by Manilal Kher Ambalal & Co., for Respondent No.1.

Mr. V.B. Konde Deshmukh, A.P.P., for the Respondent State.

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CORAM : A.M.KHANWILKAR,J.

18th March 2005

P.C.:

. Heard Counsel for the parties. This petition takes exception to the order passed by the Chief Metropolitan Magistrate, Esplanade,

Mumbai, dated 23rd November 2004 in Miscellaneous Application No. 154 of 2004 in exercise of powers under section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The fulcrum of the argument canvassed before this Court is that the Petitioner is a member of Hindu Undivided Family and in her own rights she is entitled to protect possession in respect of the disputed flat, especially in the light of the fact that there is already injunction order passed by the Court of Competent Jurisdiction (City Civil Court, Greater Mumbai) which restrains the Respondents from interfering with the Petitioner's possession in respect of the said flat. To buttress the submissions canvassed before this Court, it was pointed out that the City Civil Court in the suit instituted by the Petitioner, being S.C.Suit No. 5025 of 2003, has granted injunction by a speaking order dated 15th April 2004 in the notice of motion taken out by the Petitioner being Notice of Motion No. 4116 of 2003 in terms of prayer clauses (a) to (d) of the notice of motion, which read thus :

"(a) pending hearing and final disposal of the above suit this Hon'ble Court be pleased to restrain by its order and injunction the Defendants or any of them, their servants, agents, person claiming through, under and in trust for them, their assigns from in any manner dispossessing, removing and/or disturbing the use and occupation of the suit flat viz. 1, 26, Maulik, Swastik Park, Chembur, Mumbai 400 074.

(b) pending the hearing and final disposal of the suit this Hon'ble Court be pleased to restrain by its order and injunction the Defendants and/or any of them, their servants, agents, person claiming through, under and in trust for them, their assigns from disposing and/or selling and/or alienating or creating third party interest of whatsoever nature or kind or manner in the suit flat viz. 1, 26, Maulik, Swastik Park, Chembur, Mumbai 400 074 or any part or portion thereof, without the consent of other

members of the family.

(c) pending the hearing and final disposal of the suit, this Hon’ble Court be pleased by its order and injunction to restrain the 1st Defendant from refraining to provide pocket allowance of Rs.1,500/- per month to the Plaintiff now being provided as set out in paragraph 18 above or such other and further amount as deemed fit and proper by this Hon’ble Court in the circumstances of the case may require.

(d) pending hearing and final disposal of the suit this Hon’ble Court be pleased to restrain by its order and injunction the Defendants or any of them from any manner arranging the marriage of the Plaintiff without the consent of the Plaintiff and/or forcibly getting married the Plaintiff against her will."
(emphasis supplied)

2. The said suit has been filed by the Petitioner against her father, grandfather, brother and mother respectively claiming that they were acting against her interest and were likely to force her to marry with a person of their choice. It is not necessary to advert to the factual matrix on the basis of which the Petitioner moved the City Civil Court. What is relevant to note is that the substantive relief claimed in the said suit only prays for injunction against the defendants named in the suit. (The emphasis supplied portion of the relief claimed in the notice of motion reproduced above is not the relief in the main prayer in the suit.) The substantive reliefs as claimed in the said suit read thus :

> "(a) That this Hon'ble Court be pleased to declare that the Plaintiff is mamber of Hindu Undivided Family;
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> (b) that this Hon'ble Court be pleased to declare that the Plaintiff is lawfully and legally entitled to reside in the suit flat viz, 1, 26, Maulik, Swastik

Park, Chembur, Mumbai - 400 074;

(c) that this Hon'ble Court by its order and decree restrain the Defendants and/or any of them from in any manner dispossessing, removing interferring and/or disturbing the use and occupation of the suit Flat viz. 1, 26, Maulik, Swastik Park, Chembur, Mumbai - 400 074, by the Plaintiff;

(d) that this Hon'ble Court by its order and decree restrain the Defendants and/or any of them from disposing and/or selling and/or alienating or creating third party interest of whatsoever nature or kind in the suit flat viz. 1, 26, Maulik, Swastik Park, Chembur, Mumbai - 400074, or any part thereof without the consent of other members of the family;

(e) that this Hon'ble Court by its order and decree restrain the Defendants or any of them from in any manner arranging the marriage of the Plaintiff without consent

of the Plaintiff and/or forcibly getting married the Plaintiff against her will"

However, the interim relief granted by the City Civil Court in the notice of motion taken out by the Petitioner, which, in turn, injuncts persons claiming through the Defendants under and in trust for them, their assigns, it is argued that as the injunction order of the City Civil Court was operating against the Respondent No.1, it was not open to the Magistrate to pass order under section 14 of the Act, so as to affect the rights of the Petitioner in any manner in relation to the suit flat. To support the argument that the Respondent No.1 is covered by the expression "assigns", reliance is placed on the meaning of "assigns" as mentioned in Law Lexicon with Legal Maxims, 2nd Edition. Besides, reliance was placed on the exposition in Hindu Law by Mulla, 16th Edition, especially paras 242, 244 and 261 to contend that the Respondent No.1 being mortgagors were expected to exercise right to take possession so as to dispossess the Petitioner only after due process of law. Reliance was also placed on the Supreme Court’s

decision reported in A.I.R. 1978 S.C. 1239.

3. Indeed, the argument canvassed on behalf of the Petitioner seems to be attractive. However, after going through the records of the case, it appears that the suit which has been instituted by the Petitioner is only a subterfuge so as to protract the proceedings taken out by the Respondent No.1 against her father and grandfather, who have mortgaged the disputed flat in lieu of the finance obtained from the Respondent No.1 for the M/s. C.D. Industries Limited, which is the private company formed and registered of which the father of the Petitioner is the Director and in complete control of the said Company. The Company had secured loan from the Respondent No.1 Bank to the extent of Rs.510 lakhs and had executed documents, which included mortgage in favour of the Respondent No.1 Bank in relation to the disputed property. The mortgage is by way of deposit of title deeds as back as in July 1987. The said company did not comply with the obligation of repayment of the loan amount, for which reason proceedings under the provisions of the Securitisation Act came to be initiated.

It is obvious from the circumstances which emerge from the record that two pronged strategy was adopted so as to protract the said action taken by the Respondent Bank against the Company, which included taking over possession of the disputed property, so as to recover the loan amount. In the first place, a suit came to be filed by the Petitioner on 15th September 2003. The second proceedings, which were simultaneously taken out, was in the form of writ petition filed on behalf of the Company, to which the Petitioner's father was also a party. That was filed on September 29, 2003. By that petition, the validity of the provisions of the Securitisation Act were put in issue. As the issue was pending before the Apex Court, obviously, no urgency was felt by the Petitioner to pursue the suit to its logical end. However, it is only after the Apex Court declared that the Securitisation Act to be intra vires on 8th April 2004, that the Petitioner immediately moved the City Civil Court for interim relief on 15th April 2004 on which date the injunction has been granted. In the first place, the injunction which has been granted travels beyond the substantive relief claimed in the suit. In any

case, taking advantage of that injunction, now it is sought to be contended that the Petitioner cannot be dispossessed from the disputed premises. However, there is no disclosure made before the City Civil Court which was persuaded to give blanket interim order in favour of the Petitioner - that already certain proceedings were pending in respect of the disputed flat taken out by the Respondent Bank and which were contested by the Petitioner's father by way of writ petition. Be that as it may, the writ petition filed by the Petitioner's father came to be finally disposed of on 28th April 2004 giving time upto 30th May 2004, to take up the matter before the appropriate Court in respect of other contentions. Pursuant to the said liberty, the Petitioner's father and the Company has gone in appeal before the Debt Recovery Appellate Tribunal. That appeal came to be dismissed for non-removal of office objections. That order was, however, questioned and eventually, the appeal came to be restored on condition of payment of Rs.10,000/-. Even against this order passed by the D.R.A.T., requiring the Petitioner's father and the Company to pay costs

of Rs.10,000/-, the matter has been carried in appeal, which is stated to be pending and no efforts made to get it expedited. The fact remains that no interim order has been passed by the D.R.A.T. Besides, what is relevant to note is that the claim of the Petitioner is that she is the member of HUF; however, it is not in dispute that the karta of the said HUF is the Petitioner's grand father. It is also not in dispute that the karta (Petitioner's grandfather) as well as her father being the co-parcener of the HUF have executed documents in favour of the Respondent Bank in 1987 when the Petitioner was minor, which pertain to the disputed property. There is no challenge to the said act of the grandfather or the father of the Petitioner. There is no relief claimed in the suit that the said steps taken by the Petitioner's grandfather for creating rights or transferring rights in respect of the disputed property are not binding on the Petitioner, not being for legal necessity.

4. Be that as it may, suffice it to observe that two parallel proceedings have been taken out by the Petitioner and her father before different

forums. In my opinion, this is a fit case which falls within the exposition of the Apex Court in the case of S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others, reported in A.I.R. 1994 S.C. 855. The Apex Court has observed that if the circumstances, which can be discerned from the record, indicate that the legal action initiated is abuse of process, such action should be thrown out at the threshold. The Apex Court had gone further to observe that the property grabbers, tax evaders, "bank loan dodgers" and other unscrupulous persons from all walks of life find the Court process a convenient lever to retain the illegal gains indefinitely. The said observation applies on all fours to the fact situation of the present case. The legal question that has been raised, in my opinion, is only out of desperation and, as mentioned earlier, I see no reason to interfere in the present petition, as the same is nothing but abuse of process of Court.

5. The petition is, therefore, dismissed with exemplary costs quantified at Rs.10,000/- to be paid to the Respondent No.1 within two weeks

from today.

(A.M.KHANWILKAR,J.)